



**MARK MIGDAL & HAYDEN**

FLORIDA  
and the rest of the world



# Practice areas

1

## **International Arbitration & Cross-Border Disputes**

In our modern global economy, international arbitration has emerged as the primary method to resolve cross-border disputes.

As a law firm based in Miami, a leading arbitration hub, MM&H has gained substantial experience in representing clients across many countries and industry sectors in the resolution of their disputes through arbitration. Providing sophisticated counsel in arbitration, mediation, early assessment of the available dispute resolution mechanisms when our clients venture abroad, our firm's attorneys are highly experienced and able to represent clients in front of numerous arbitration institutions, including the American Arbitration Association (AAA), the International Centre for Dispute Resolution (ICDR), the London Court of International

Arbitration (LCIA), the International Centre for Settlement of Investment Disputes (ICSID), and the International Chamber of Commerce (ICC) – International Court of Arbitration.

As part of our early assessment, we like to assist clients in determining the dispute resolution provision that will best meet their needs before the dispute arises, and craft dispute resolution provisions that are tailored to most efficiently and effectively resolve their anticipated disputes. After the dispute arises, we consider whether mediation, conciliation and all other ADR tools are viable options for resolving the dispute. These processes can be particularly useful in resolving disputes in ongoing commercial relationships.

# 2

## **Complex Commercial Litigation**

We know that there is no playbook for complex commercial litigation. And rarely is there a silver bullet. Our fierce team of litigators has aggregated the best of its varied experiences to develop and implement optimal strategy on a case-by-case basis.

Our commercial litigation experiences range from the public defender's office, to some of the top law firms in the world, to federal court clerks, all of which we bring to bear on each matter. With our firm's case load evenly split between federal and state court, we are equally comfortable in either forum.

Being resident in Miami, much of the litigation we handle touches real estate – construction defects, disputes among joint venture partners,

between borrowers and lenders, commercial landlords and tenants, or developers and property owners. We also routinely advise and litigate disputes in the realm of “business torts” – ranging from allegations of breaches of fiduciary duty, corporate divorce, broker disputes, professional negligence claims, RICO (Racketeer Influenced and Corrupt Organizations Act), breaches of contract and all fraud.

We work with our network of seasoned mortgage industry professionals to assist financial institutions and government sponsored entities, or GSEs, in maximizing their recovery on deficiency balances, and we are one of the few law firms in Florida with deep experience in litigating closing protection letter claims against title insurance companies. MM&H also regularly handles repurchase and indemnity claims against loan originators, professional negligence claims against closing agents and appraisers and fraud claims against builders.



## ETAN MARK



*"My company has more than \$1.5B in assets under management and works with a half-dozen different attorneys every quarter. Etan is not just our lawyer – he is our company's consigliere. His responsiveness, counsel and advocacy skills are true differentiators."*

**Managing Principal, Florida real estate development company**

### AWARDS

Chambers & Partners USA, America's Leading Business Lawyers, General Commercial Litigation, Up and Coming, 2013-2014 | Daily Business Review, Rising Stars 40 Under 40, 2013 | South Florida Legal Guide, Top Up and Comer, 2016-2017 | Florida's Super Lawyers, Business Litigation, Criminal Defense: White Collar, 2014 | Florida's Super Lawyers, Rising Star, 2009-2017 | Florida Trend, Legal Elite – Top Up and Comer, 2013 | Florida Trend, Legal Elite – Up and Comer, 2016 | Florida Trend, Legal Elite 2017 | Martindale-Hubbell, AV® Preeminent™ rated | South Florida Business Journal, Top 40 under 40, 2015

### ASSOCIATIONS

- Board of Trustees, HistoryMiami
- Vice-President, Board of Trustees, Temple Beth Shalom
- Chair, 11th Judicial Circuit Historical Society
- Leadership Miami, 2009 Graduate
- 11th Judicial Circuit Grievance Committee of the Florida Bar (former Chair)
- Member of Miami Beach Bar Association
- Member, New York City Bar Association

THINGS DO NOT HAPPEN  
THINGS ARE MADE TO HAPPEN

JOHN F KENNEDY  
(AND MORE RECENTLY PETYR BAELESH)

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MICHIGAN, 00 | GEORGE WASHINGTON LAW, 03

Foremost, Etan is a litigation strategist and collaborator, working with clients to advise on what they should and (often) should not do when presented with the unique challenges of a business in litigation, or one facing the prospect of litigation. Etan is also passionate about the future of the legal practice, and when it benefits his clients, is committed to applying those trends to his practice.

Etan has been recognized by Chambers & Partners USA as an "Up-and-Comer" in litigation; described as the "young dynamos" of a practice area. Sources interviewed by Chambers – none of whom is his mother – have praised Etan as "exceptional," "very passionate about the case, always there for us and very responsive. We feel he is always trying to do right by us and he discusses our options very candidly."

Many of Etan's cases touch either real estate or allegations of fraud; often both. He also serves as an "inside-outside" counsel, helping clients avoid or mitigate risk in the day-to-day operations of their businesses. His representative clients include public and private companies, real estate developers, investors and owners, tech entrepreneurs, gaming operators, family offices, hotels and banks. For some strange reason, Etan is particularly enamored with the ins and outs of the Racketeer Influenced and Corrupt Organizations Act (RICO) and has written and read extensively on the subject. The rest of the time, he listens to podcasts (Dan Carlin's Hardcore History is my favorite), smokes brisket on his Big Green Egg, or gets bossed around but wonders how someone so little can be so terrifying lovingly dotes on his family.

Etan began his legal career working as a business and securities litigator at a top 10 American Lawyer "Big Law" firm in New York. Since leaving New York for higher sea levels, Etan became a devotee of the value proposition sometimes offered by "Not Big Law" – efficiency, service and quality. Etan worked as a law clerk to a federal district court judge in Miami, where he gained an insider's view on effective advocacy. Following his clerkship, Etan owned and was the CEO of a company that leveraged the global marketplace by outsourcing certain legal services to top attorneys and other legal service providers in India. Prior to founding MM&H, Etan was a partner at Berger Singerman's Miami office, and was head of the firm's Dispute Resolution Practice.

### EXPERIENCE

Berger Singerman LLP – Partner  
iDiligence, LLC – CEO  
Law Clerk to the Honorable K. Michael Moore, U.S. District Court Judge, Southern District of Florida  
Weil Gotshal & Manges, LLP – Associate (NY)



## JOSH MIGDAL



*At every turn during his representation, Josh provided sound advice which took into account cost and future business endeavors. Josh is both a zealous advocate and trusted counselor."*

**Jon Bourbeau,**  
CEO Pacer Partners

### AWARDS

Recipient of Sandra C. Goldstein  
Young Leadership Award from  
Greater Miami Jewish Federation  
Super Lawyer Rising Star 2010-2017

### ASSOCIATIONS

- Florida Regional Board Member of Anti-Defamation League
- Co-chair of the Greater Miami Jewish Federation's Network Executive Board
- Board Member of Greater Miami Jewish Federation
- Board Member of JCS

THE FUTURE BELONGS TO  
THOSE WHO SEE IT COMING

DAVID BOWIE

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WISCONSIN-MADISON, 02 | LOYOLA, 05

Josh takes great pride in understanding the issues which confront his clients and then crafting an efficient and effective strategy tailored to achieving his clients' goals. For example, in the aftermath of the financial crisis, Josh successfully implemented an innovative legal theory to obtain recovery for government sponsored entities and financial institutions from title insurers pursuant to closing protection letter claims. Josh is one of only a handful of lawyers in Florida that stridently advocates to secure this type of recovery from title insurers on such claims. Josh is also a formidable opponent in complex commercial litigation, corporate divorce, business torts, professional negligence, real estate disputes and repurchase and indemnity claims.

Josh, a Midwesterner and above average poker player, has immersed himself in South Florida's community and has been fortunate to be able to act in leadership roles for a number of organizations. His most recent appointment, in June this year, was to the board of directors of Florida's Jewish Community Services (JCS).

### EXPERIENCE

Hanzman, Criden & Love  
Hall, Lamb & Hall  
Boyd Richards  
Stolzenberg, Gelles, Flynn & Arango, LLP



## DON HAYDEN

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*“Donald Hayden é um profissional experiente e respeitado na esfera do Direito Empresarial Internacional. Tive a oportunidade de participar com ele em reuniões de trabalho para tratar de demandas na Corte Norteamericana, envolvendo grandes corporações internacionais, e os resultados foram excelentes.”*

**Hermann Brasilia, Sócio na Hermann e Chami Advocacia e Engenharia Legal**

### ASSOCIATIONS

- Chartered Institute of Arbitrators (CIArb) – Fellow
- Miami International Arbitration Society – Founding Member, Board of Directors, 2013-Present
- Miami International Arbitration Foundation – Secretary, 2015-Present
- American Bar Association, Litigation Counsel of America – Fellow, 2010-Present
- American Bar Association, Section of Litigation – Co-chair, International Litigation Committee, 2002-2006
- American Bar Association, Section of International Law & Practice, 2014-Present
- International Council for Commercial Arbitration, 2014-Present
- Law360 International Arbitration Editorial Advisory Board, 2015-Present  
Member of the Florida Bar’s Civil Rules Committee, 2016-Present
- Federal Bar Association – Member
- Lexis Legal Advisory Board – Member, 2009-Present
- Lambda Legal – National Leadership Council, 2008-Present
- Catalyst Miami – Board of Directors, 2014-2016
- The Miami Foundation – Chairman of GLBT Fund Grants Committee, 2014-Present

NOTRE DAME, 82 | LOYOLA, 85

Although age is just a state of mind at MM&H, with thirty-two years of experience as a commercial litigator and a reputation as a seasoned practitioner in the international arbitration arena, Don has been around the block (and the globe) a few times during his career. Don prides himself as being a trusted advisor who can evaluate complex claims, especially for those clients who find themselves in multiple jurisdictions given today’s global economy.

Don has been ranked in Chambers & Partners since 2009 for commercial litigation, and has been regularly recognized as a top attorney by Best Lawyers in America, South Florida Legal Guide, Florida’s Super Lawyers, Florida Trend Legal Elite and the Legal 500 for either litigation or international arbitration. In 2010, he was inducted as a Fellow of the Litigation Counsel of America.

Over the years, Don has represented AT&T, Knauf Plasterboard, Borg Warner, Banco do Brasil, Travelers Insurance, Google, and SAP to name a few.

Throughout his career, Don has been committed to pro bono representation. He served as the Chair of the widely recognized Pro Bono Program of Baker & McKenzie in North America for over seven years. He co-counseled with Lambda Legal in *Langbehn v. Jackson Memorial Hospital*, a high-profile case that led to an executive order by President Obama requiring all health care facilities receiving federal funds to have equal visitation rights for same sex families. In addition, he was involved in the drafting of an amicus brief on behalf of leading juvenile rights organizations, in *Gill v. State*, which led to Florida courts overturning the state’s prohibition against homosexuals adopting, and in *Windsor v. the Internal Revenue Service*, he assisted in drafting an amicus brief on behalf of Fortune 500 companies in favor of marriage equality. He also was awarded for his work in the areas of foster care and juvenile justice by Lawyers for Children America and the Miami-Dade Public Defender’s Office.

### EXPERIENCE

Berger Singerman, Florida  
Baker & McKenzie, Chicago and Miami Offices

### LIST OF AWARDS

Visit <https://www.markmigdal.com/don-hayden/>



### LIST OF PUBLISHED ARTICLES

Visit <https://www.markmigdal.com/don-hayden/>



# REPRESENTATIVE CASES

## International Arbitration

- Obtained significant settlement for high net worth Spanish family against leading international financial broker for losses resulting from unauthorized transactions by rogue agent that resulted in losses of more than \$8 million.
- Represented South African gold mining and exploration company in ICDR arbitration involving breach of contract claims and ownership interests in gold mine resulting in significant arbitration award eventually resolved through settlement after award.
- Represented Ecuadorian distributor in ICC arbitration involving claims by Korean manufacturer and counterclaims by distributor arising out of the termination of the distribution agreement for Ecuador and other Latin American companies.
- Represented Brazilian aviation parts provider with long term exclusive sales representative agreements for major European aviation conglomerate in its wrongful termination claims involving independent contracts with various subsidiaries and affiliate companies requiring prosecuting parallel ICC and LCIA proceedings as well as ancillary judicial proceedings eventually resulting in negotiation of omnibus settlement.
- Obtained significant award in reinsurance arbitration involving leading international carriers and reinsurance companies in coverage dispute arising from construction of major Latin American energy project.
- Represented general contractor in ICDR arbitration in claims against major US energy company in claims relating to construction of Brazilian power generation plant which was favorably resolved after full hearing through settlement prior to award.

## Cross-border Disputes

- Obtained dismissal of claims under Florida Whistleblower's Statute by terminated executive working in Latin American operations against leading internet and technology company through motion practice as well as favorable resolution of wrongful discharge claims in related arbitration in US and civil litigation in Argentina.
- Successfully represented President of the Republic of Colombia, Ecopetrol, the state-owned petroleum company, as well as other senior government officials by obtaining dismissal of RICO and other fraud claims arising out of alleged kickbacks in the award of oil exploration and drilling rights with stated damages of more than \$250 million.
- Successfully recovered approximately \$4 million for Venezuelan stakeholder in Texas federal court

interpleader action involving claims by Venezuelan government controlled entity, Petroles de Venezuela, S. A. (PDVSA), arising out of expropriation of client's Venezuelan operations.

- Represented Florida company in its claims against Bariven, a wholly owned subsidiary of PDVSA, the Venezuelan state-owned oil company in substantial claims arising out of sale of powdered milk from China contaminated with melamine involving parallel proceedings in Miami and Cayman Islands.
- Successfully obtained transfer of action for misappropriation of trade secrets and breach of fiduciary duties based upon choice of law and forum selection clauses of distributorship agreement for Samsung Semiconductors.
- Represented a Venezuelan National in connection with an international transaction over \$15 million.
- Represented Spanish and Mexican telecommunications companies in various litigations arising out of their investments in U.S. radio and television companies eventually resulting in significant money damage claims for those Spanish and Mexican investors arising from misappropriations and breaches of fiduciary duties by their U.S. partner.
- Obtained dismissal of all claims including claims for civil theft, conversion and tortious interference against Mexican senior executive arising out of termination of long term contract with Mexican state government entity after federal bench trial.
- Represented Republic of Ecuador in both ICC arbitration proceedings and related U.S. litigation involving breach of multi-year electrical utility concessions agreement.
- Obtained dismissal of all claims including fraud and civil conspiracy against major French aircraft engine manufacturer, Safran Group and its subsidiaries, including fraud, civil conspiracy and theft of trade secrets through focused motion practice.

## Real Estate Litigation

- Obtained favorable settlement of real estate fraud claim for real estate developer based upon material misrepresentations and omissions by broker involved in the sale of large commercial property in Palm Beach County after successful motion practice narrowing exposure.
- Counsel to Miami-based hotel/condominium in connection with \$250+ million LLC dispute among owners of the company, triggering significant litigation concerning corporate governance and LLC member rights.
- Counsel to real estate developers in connection with allegations of fraud, breach of fiduciary duty and tortious interference relating to the purchase

and potential sale of tracts of land in Broward County.

- Plaintiff's counsel to Lincoln Road art gallery in connection with a multi-million dollar dispute with its landlord and a neighboring tenant.
- Plaintiff's counsel to owner of Hollywood office building in connection with its multi-million dollar lawsuit against its general contractor.
- Counsel to real estate investors in connection with the purchase of debt (and eventual foreclosure) of dozens of parcels in Palm Beach County.
- Counsel to luxury residential real estate owners alleging a breach of contract by a developer.
- Represented Canadian investors in Fort Lauderdale hotel property in mortgage foreclosure action with lender liability counterclaims resulting in successful resolution through renegotiation of financing and monetary recovery on counterclaims.
- Represent borrowers and lenders in a variety of commercial foreclosure matters and litigated substantial lender liability counterclaims on behalf of guarantors and borrowers.
- Counsel to investors in private equity funds, REITs, high-yield bonds and other financial vehicles in lawsuits against financial advisors and banks.
- Counsel to prominent Miami real estate developers in defense of fraud claims.
- Recovered in excess of \$30,000,000 in dozens of cases as South Florida counsel for one of the largest financial institutions in the country and a government sponsored enterprise prosecuting claims seeking recovery from title insurers for breach of closing instructions, fraud and dishonesty and against loan sellers seeking repurchase and/or indemnification for breach of Master Correspondent Loan Purchase Agreements.
- Obtained summary judgment for title insurer faced with class action related to alleged failure to provide reissue rate.
- Obtained pre-suit recovery for owner of large commercial building in connection with construction defect claims related to the faulty installation of a roof asserted against contractors, architect and roof manufacturer.
- Obtained summary judgment for law firm, affirmed on appeal, related to statute of limitations. *Veitch v. Wasserman*, 117 So. 3d 424 (Fla. 3d DCA 2012).
- South Florida counsel to owner of \$3.6 billion in assets under management, including approximately 15,000 multi-family units and 10 hotels, related to a variety of litigation and business disputes involving those assets in South Florida.
- Represented condominium and homeowners' association related to officer and director liability claims.



# REPRESENTATIVE CASES

## Construction Litigation

- Defeated both motions for summary judgment seeking to exclude our client from obtaining consequential damages and damages related to water intrusion.
- Plaintiff's counsel to owner of Hollywood office building in connection with its multi-million dollar lawsuit against its general contractor.
- Represented target defendant in the Chinese Manufactured Drywall Litigation, which involved hundreds of national class actions consolidated in a multi-district proceeding in the federal court in New Orleans. Knauf Plasterboard, one of the world's largest privately-held building materials manufacturers was the primary defendant in litigation involving over 30,000 impacted found primarily throughout the Southeastern U.S. Litigation arising from installation of Chinese drywall product in new home construction.
- Obtained pre-suit recovery for owner of large commercial office complex in connection with construction defect claims related to the faulty installation of a roof asserted against contractors, architect and roof manufacturer.
- Counsel to major property insurer in putative class action based on alleged failure of insurer to pay for building code upgrades.

## Fraud Litigation

- Successfully obtained favorable judgment for Citicorp Investment Bank after federal bench trial where plaintiff claimed securities fraud in the sale of promissory notes and stock warrants.
- Counsel to prominent Miami real estate developers in defense of fraud claims.
- Recovered in excess of \$30,000,000 in dozens of cases as South Florida counsel for one of the largest financial institutions in the country and a government sponsored enterprise prosecuting claims seeking recovery from title insurers for breach of closing instructions, fraud and dishonesty and against loan sellers seeking repurchase and/or indemnification for breach of Master Correspondent Loan Purchase Agreements.
- South Florida counsel to owner of \$3.6 billion in assets under management, including approximately 15,000 multi-family units and 10 hotels, related to a variety of litigation and business dispute involving those assets in South Florida.
- Counsel to defrauded investor in connection with multi-million dollar "pump-and-dump" scheme.
- Defense counsel to SAP software implementation consultant accused of fraud and deceptive practices.
- Defense of claims for breach of fiduciary duty and

conversion for alleged improper use of corporate funds by 50% owner of closely held telecommunications company.

- Counsel to real estate developers in connection with allegations of fraud, breach of fiduciary duty and tortious interference relating to the purchase and potential sale of tracts of land in Broward County.
- Defense counsel to individuals and entities accused of extortion, mail fraud and wire fraud relating to public records requests and the filing of allegedly extortionate lawsuits. Order of dismissal, with prejudice, available at *Town of Gulf Stream v. O'Boyle*, No. 15-80182-CIV, 2015 WL 3970612, at \*1 (S.D. Fla. June 30, 2015), *aff'd* sub nom. *Town of Gulf Stream, et al., v. Martin O'Boyle, et al.*, No. 15-13433, 2016 WL 3401681 (11th Cir. June 21, 2016).
- Defense counsel to international bank accused of assisting former South American head-of-state in the laundering of millions of dollars, the commission of fraud and the violation of the RICO statute.
- Obtained recovery of \$1,750,000 for real estate executive for breach of promissory note, negligent misrepresentation and fraud.
- Representation of major art dealer in number of related matters involving allegations that significant artwork including works by Andy Warhol and others were not originals as represented prior to sale.
- Represented provider of residential mortgage foreclosure processing services, resulting in favorable summary judgment ruling in connection with state common law fraud and negligent misrepresentation claims based on alleged misstatements and omissions in the sale of securities.
- Counsel to major insurer in various class actions and putative class actions alleging hundreds of millions in damages for fraud in connection with the sale of deferred annuities to seniors.
- Represented various trustees in connection with more than 100 "clawback" (avoidance) actions.

## Business Torts

- Represented one of venture partners against Waste Management and other venture partner involving tortious interference and other claims arising from Waste Management's \$510 million purchase of the assets being used by the joint venture to compete in the Broward county waste market.
- Obtained emergency freeze order for Palm Beach privately held company which resulted in recovery of more than half of the \$7.5 million loss due to employee embezzlement within 60 days of

discovery and initiated negligence claims against accounting firm and financial institutions that failed to uncover embezzlement scheme over 10-year period.

- Successfully defeated all derivative and direct claims of more than \$15 million against majority shareholders and individual officers and directors after full trial arising out of failed launch of medical device.
- Obtained \$15 million settlement for minority shareholder in derivative claim arising out of claims of self-dealing and breach of fiduciary duty by majority shareholders and officers and directors of publicly held company.
- Represented South Florida staffing company in federal trademark claim brought by nationally recognized competitor claiming infringement of trade name.
- Obtained Eleventh Circuit decision affirming trial court's summary judgment in favor of The Golf Channel where plaintiff-appellant failed to establish protectible trademark interest.
- Obtained summary judgment for national auto glass repair and replacement company of anti-trust claims brought by independent glass companies relating to alleged violations of Sections 1 and 2 of the Sherman Act.
- Obtained dismissal of RICO, Robinson-Patman and commercial bribery claims against machine tool manufacturer based upon the termination of one of its long-time distributors and replacement with another company.
- Obtained appellate decision reversing jury verdict for approximately \$4.5 million in damages and attorney's fees for alleged antitrust violations in its entirety on behalf of Browning Ferris International.
- Defense counsel to SAP software implementation consultant accused of fraud and deceptive practices.
- Represented oil and gas company in a professional liability claim related to a defective Phase I environmental report prepared by a prominent environmental engineering firm.
- Obtained summary judgment, affirmed on appeal, in defense of a legal malpractice claim brought against a law firm arising from the drafting of estate planning documents. *Zohlman v. Zoldan* 90 So.3d 296 (Fla. 3d DCA 2012).
- Obtained summary judgment for law firm, affirmed on appeal, related to statute of limitations. *Veitch v. Wasserman*, 117 So. 3d 424 (Fla. 3d DCA 2012).
- Obtained emergency injunctive relief and money damages for client who held exclusive licensing rights to merchandise related to major rock band during its North American tour and enjoined the

# REPRESENTATIVE CASES

band through third party merchandisers from selling competing merchandise throughout the entirety of the tour schedule.

- Represented major retailer in putative class action alleging failure of company to make requisite accommodations for blind individuals accessing company's public website.
- Successfully represented Judge Stettin in connection with the appeal to the Eleventh Circuit Court of Appeal of the Federal Government's attempt to forfeit the assets of Scott W. Rothstein. *United States v. Rothstein Rosenfeldt Adler P.A.*, 717 F.3d 1205 (11th Cir. 2013).

## RICO

- Defense counsel to individuals and entities accused of extortion, mail fraud and wire fraud relating to public records requests and the filing of allegedly extortionate lawsuits. Order of dismissal, with prejudice, available at *Town of Gulf Stream v. O'Boyle*, No. 15-80182-CIV, 2015 WL 3970612, at \*1 (S.D. Fla. June 30, 2015), *aff'd* sub nom. *Town of Gulf Stream, et al., v. Martin O'Boyle, et al.*, No. 15-13433, 2016 WL 3401681 (11th Cir. June 21, 2016).
- Defense counsel to international bank accused of assisting former South American head-of-state in the laundering of millions of dollars, commission of fraud and the violation of the RICO Statute.
- Defense counsel to former principal of publicly traded real estate investment company accused of participating in RICO enterprise.
- Defense counsel to engineering company accused of violations under the False Claims Act, RICO, the Florida Deceptive and Unfair Trade Practices Act and common law fraud. Order of dismissal, with prejudice, available at: *U.S. ex rel. Sanchez v. Abuabara*, No. 10-61673-CIV, 2012 WL 1999527 (S.D. Fla. June 4, 2012).
- Defense counsel in case alleging RICO violations, including mail fraud and wire fraud, by a national provider of mortgage and consumer loan processing services, mortgage settlement services, default solutions and loan performance analytics.
- Successfully represented President of the Republic of Colombia, Ecopetrol, the state-owned petroleum company, as well as other senior government officials by obtaining dismissal of RICO and other fraud claims arising out of alleged kickbacks in the award of oil exploration and drilling rights with stated damages of more than \$250 million.
- Represented major insurer on appeal to Ninth Circuit from district court's ruling in RICO class action that it had jurisdiction to prohibit defendant from settling cases in other forums

that might affect claims of class members before that court.

- Plaintiff's counsel to regional company in action for RICO violations, civil theft, breach of contract, and unjust enrichment.

## Bankruptcy and Insolvency

- Represented Judge Herbert Stettin as Chapter 11 Trustee for the law firm of Rothstein, Rosenfeldt & Adler, P.A. This case is reported to be the largest Ponzi scheme in Florida history and involves approximately \$1.2 billion in claims. The confirmed Plan of Reorganization is expected to provide a 100% distribution to all allowed general unsecured creditors. In re RRA, 09-34791-RBR (Bankr. S.D. Fla. 2009)
- Represented Daniel Stermer as Assignee in the assignment for benefit of creditors for The Peer Center, a mental health support facility in Broward County. The Peer Center's assets were sold and its operations closed. All creditors received a distribution and over \$100,000 was donated to a charitable cause dedicated to the same mission as The Peer Center.
- Successfully defended an involuntary bankruptcy petition against a foreign national and obtained an award of damages and attorneys' fees under 303(i) of the Bankruptcy Code.
- Represented CP Miami LLC in connection with the Chapter 11 Proceedings of Commodore Parking Plaza LP, and obtained a transfer of the debtor's assets to CP Miami through a Chapter 11 Plan.
- Represented private education institution in connection with an out of court restructuring with its largest lender (a national bank) and obtained a reduction of 50% of the principal loan amount.
- Represented various buyers of assets in connection with chapter 7 and chapter 11 bankruptcy proceedings.
- Represented various defendants in adversary proceedings before bankruptcy courts.

## Insurance

- Obtained summary judgment for Travelers' Insurance Company based upon interpretation of standard provisions of employee dishonesty bond and finding that plaintiff's coverage was limited to limits of original bond coverage.
- Obtained landmark decision in which Fourth Circuit's reversed summary judgment in favor of insured finding that damages for which insurance recovery sought fell outside the available coverages of the industry-standardized D&O fiduciary bond.
- Obtained Eleventh Circuit decision in favor of

insurer on issues of the application of the attorney-client privilege and work product doctrine to claims and forensic accounting documentation.

- Represented oil and gas company in a professional liability claim related to a defective Phase I environmental report prepared by a prominent environmental engineering firm.
- Obtained summary judgment, affirmed on appeal, in defense of a legal malpractice claim brought against a law firm related to the drafting of estate planning documents. *Zohman v. Zoldan* 90 So.3d 296 (Fla. 3d DCA 2012).
- Recovered in excess of \$30,000,000 in dozens of cases as South Florida counsel for one of the largest financial institutions in the country and a government sponsored enterprise prosecuting claims seeking recovery from title insurers for breach of closing instructions, fraud and dishonesty and against loan sellers seeking repurchase and/or indemnification for breach of Master Correspondent Loan Purchase Agreements.
- Plaintiff's counsel to Lincoln Road art gallery in connection with a multi-million dollar dispute with its landlord and a neighboring tenant.
- Obtained summary judgment for title insurer faced with class action related to alleged failure to provide reissue rate.
- Represented condominium and homeowner's association related to various claims for director and officer liability.
- Obtained full recovery for all damages sought and attorneys' fees after full bench trial for employer against third party administrator of employee benefits program based upon violation of ERISA statute and breach of fiduciary duty claims.
- Counsel to insurance company in deceptive sales practices class action involving over 300,000 class members.
- Counsel to major insurers in connection with market conduct and regulatory issues affecting the sale of life and annuity products to identify and reduce litigation risk.
- Counsel to major insurer in breach of contract and bad faith class action denying certification.
- Counsel to major insurer in putative class action alleging unfair trade practices and state statutory violations, resulting in dismissal of action.
- Counsel to major insurer in various opt-out lawsuits concerning allegedly unlawful and negligent practices in the sale of deferred annuities.

## Securities

- Represented high net worth Spanish developer in significant misappropriation and unauthorized trade claim against major broker dealer and rogue individual broker which was resolved through

# REPRESENTATIVE CASES

- settlement at mediation before final hearing.
- Obtained dismissal of 10b-5 claims against senior officer of a public company involved in the time share industry as being time-barred and for failure to state control person liability against the executive under Section 20(a) of the Exchange Act.
- Counsel to defrauded investor in connection with multi-million dollar "pump-and-dump" scheme.
- Counsel to investors in private equity funds, RE-ITs, high-yield bonds and other financial vehicles in lawsuits against financial advisors and banks.
- Counsel to bondholders in a series of multi-billion dollar breach of fiduciary duty and securities lawsuits against AT&T, Cox, Comcast and others arising from their role as controlling shareholders in the first company to provide high-speed internet access via cable modem.
- Represented Cannacord Genuity Limited, f/k/a Collins Stewart, a major London brokerage house, in a securities fraud action in which it was alleged that it contributed to approximately \$400 million in losses suffered in connection with an IPO raising monies for an Orlando commercial real estate and entertainment development which was resolved after aggressive motion practice.
- Represented provider of residential mortgage foreclosure processing services in putative federal securities class action in district court and on appeal, obtaining dismissal from the district court, affirmed by the Eleventh Circuit Court of Appeals in Philadelphia Financial Management of San Francisco, LLC, et al. v. DJSP Enterprises, Inc., et al., 572 F. App'x 713 (11th Cir. 2014).
- Represented company in connection with SEC proceedings concerning alleged overstatements and misallocation of revenue related to foreclosure processing services in company's financial statements.

## Appellate Litigation

- Filed amicus brief to US Supreme Court on behalf of child advocacy and juvenile justice organizations across the country in support of petition of writ of certiorari seeking uniform recognition of valid adoption orders involving the adoption of children by same sex couples.
- Obtained landmark decision on behalf of leading pharmaceutical company establishing "learned intermediary doctrine" as the controlling doctrine for determining adequacy of warnings for the pharma industry and in health care in general.
- Obtained Eleventh Circuit decision affirming trial court's summary judgment in favor of The Golf Channel where plaintiff-appellant failed to establish protectible trademark interest.
- Multiple related lawsuits involving claims of secu-

- rities fraud brought in both the state and federal courts were successfully thwarted repeatedly through separate decisions from the Eleventh Circuit at the federal level and the Fourth Circuit Court of Appeals at the state court level.
- Obtained appellate decision reversing jury verdict for approximately \$4.5 million in damages and attorney's fees for alleged antitrust violations in its entirety on behalf of Browning Ferris International.
- Obtained favorable appellate decision from Second Circuit Court of Appeals affirming lower court's refusal to reinstate federal proceedings capping an extended representation over many years to prevent a \$1 billion claim against Banco do Brasil, a major international financial institution, from being here in the United States. Through contorted pleading of the claims and manipulation of the Brazilian courts, the plaintiff sought to have the matter reinstated which had originally been dismissed on forum non conveniens grounds. *Mendes Junior International Company V. Banco do Brasil, S.A.* 394 Fed. Appx. 787 (2d Cir. 2010); *Mendes Junior Int'l Co. V. Banco do Brasil, S.A.*, 15 F. Supp. 332 (S.D.N.Y. 1998).
- Represented national organization as amicus curiae in the United States Supreme Court, which affirmed the lower court's ruling, in a matter involving interpretation and application of the Securities Litigation Uniform Standards Act (SLUSA) and its potential impact on the ability of bankruptcy trustees to exercise their fiduciary duties.
- Represented national organization as amicus curiae in the United States Supreme Court on petition for writ of certiorari on grounds of a circuit split and interest in uniformity in the application of the Bankruptcy Code, in particular §546(e), which impacts a bankruptcy trustees' ability to effectively administer the bankruptcy estate through use of the trustees' avoidance powers.
- Represented judgment debtor on appeal in the Eleventh Circuit and in the Supreme Court on a certified question concerning the district court's ruling that Florida statute of limitations barred appellants' post-judgment collection efforts.
- Represented prominent Miami based brokerage firm in connection with appeal of \$9 million judgment for breach of contract in Third District Court of Appeal.
- Represented federal criminal defendant and obtained reversal of conviction for Hobbs Act conspiracy to rob a stash house of cocaine in Eleventh Circuit Court of Appeals based on insufficiency of the evidence, including briefing and argument of evidentiary, constitutional, and federal sentencing issues. *United States v. Sardinias*, 386 F. App'x 927 (11th Cir. 2010).
- Representation of criminal defendants on federal

- sentencing issues on appeal in the Eleventh Circuit from convictions for conspiracy, robbery, narcotics and trafficking.
- Represented federally recognized Indian Tribe on petition for writ of certiorari to the United States Supreme Court involving issue of federal question jurisdiction in action to enforce Tribal court judgment and supplemental briefing in response to Solicitor General's brief.

# TECHNOLOGY COMMUNICATION WORKFLOW

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